

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMBOTELLADORA ELECTROPURA
S.A. de C.V., an El Salvador corporation,
Plaintiff,

v.
ACCUTEK PACKAGING EQUIPMENT
COMPANY, INC., a California
corporation; and DOES 1 through 25,
inclusive.

Case No.: 16-cv-0724-GPC (DHB)

**ORDER RE: JOINT MOTION FOR
DETERMINATION OF DISCOVERY
DISPUTE**

(ECF No. 33)

On June 22, 2017, Defendant Accutek Packaging Equipment Company, Inc. (“Defendant”) and Plaintiff Embotelladora Electropura S.A. de C.V. (“Plaintiff”) filed a Joint Motion for Determination of Discovery Dispute regarding Plaintiff’s failure to comply with the Court’s scheduling order’s expert witness disclosure deadline. (ECF No. 33.) This dispute arose out of Plaintiff’s late designation of expert witness and failure to disclose expert witness testimony according to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. In the joint motion, Plaintiff seeks additional time to comply with its scheduling order obligations while Defendant argues that Plaintiff should not be permitted to present expert testimony at trial. (ECF Nos. 33-1 at p. 14, 33-2 at pp. 3-6.)

1 The Court notes that the Honorable Gonzalo P. Curiel, United States District Judge,
2 recently issued an order granting in part and denying in part Defendant's motion for
3 summary judgment. (See ECF No. 36.) The sole issue at summary judgment was whether
4 the limitation on liability provision contained within the Monoblock's Purchase Agreement
5 was valid. (ECF No. 36 at p. 4.) Judge Curiel concluded that "The limitation on liability
6 provision is enforceable to the extent that it does not insulate Defendant from liability for
7 fraud or misrepresentation." (*Id.* at p. 11.)

8 Based on the changed circumstance due to Judge Curiel's recent order, the Court
9 finds good cause exists to reopen discovery and modify the scheduling order. Accordingly,
10 the Court modifies the previous scheduling order as follows:

11 1. The parties shall designate their respective experts in writing by **September**
12 **27, 2017**. Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any person who
13 may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R.
14 Evid. This requirement is not limited to retained experts. The written designations shall
15 include the name, address and telephone number of the expert and a reasonable summary
16 of the testimony the expert is expected to provide. The list shall also include the normal
17 rates the expert charges for deposition and trial testimony. The parties must disclose the
18 identity of any rebuttal experts on or before **October 4, 2017**.

19 2. By **October 11, 2017**, each party shall comply with the disclosure provisions
20 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
21 requirement applies to all persons retained or specially employed to provide expert
22 testimony, or whose duties as an employee of the party regularly involve the giving of
23 expert testimony. **Except as provided in the paragraph below, any party that fails to**
24 **make these disclosures shall not, absent substantial justification, be permitted to use**
25 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
26 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

27 3. Any party shall supplement its disclosure regarding contradictory or rebuttal
28 evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **October 25, 2017**.

1 4. All discovery shall be completed by all parties by **November 13, 2017**.
2 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil
3 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
4 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
5 into account the times for service, notice and response as set forth in the Federal Rules of
6 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with**
7 **regard to all discovery disputes in compliance with Local Rule 26.1(a)**. The Court
8 expects counsel to make every effort to resolve all disputes without court intervention
9 through the meet and confer process. If the parties reach an impasse on any discovery
10 issue, counsel shall file an appropriate joint motion within the time limit and according to
11 the procedures outlined in Magistrate Judge David H. Bartick’s Civil Chambers Rules,
12 which are posted on the Court’s website. **A failure to comply in this regard will result**
13 **in a waiver of a party’s discovery issue. Absent an order of the Court, no stipulation**
14 **continuing or altering this requirement will be recognized by the Court.**

15 5. Please be advised that failure to comply with any discovery order of the Court
16 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
17 the introduction of experts or other designated matters in evidence.

18 6. All pretrial motions, including those addressing Daubert issues related to
19 dispositive motions must be filed by **November 28, 2017**. Pursuant to Honorable Gonzalo
20 P. Curiel’s Civil Pretrial & Trial Procedures, all motions for summary judgment shall be
21 accompanied by a separate statement of undisputed material facts. Any opposition to a
22 summary judgment motion shall include a response to the separate statement of undisputed
23 material facts. Counsel for the moving party must obtain a motion hearing date from the
24 law clerk of the judge who will hear the motion. Motion papers MUST be filed and served
25 the same day of obtaining a motion hearing date from chambers. A briefing schedule will
26 be issued once a motion has been filed. The period of time between the date you request a
27 motion date and the hearing date may vary. Please plan accordingly. Failure to make a
28 timely request for a motion date may result in the motion not being heard.

1 7. A Mandatory Settlement Conference shall still be conducted on November
2 16, 2017 at 10:00 a.m. in the chambers of Magistrate Judge David H. Bartick. Counsel
3 shall submit settlement statements **directly** to Judge Bartick's chambers by November 9,
4 2017.¹ The parties may either submit confidential settlement statements or may exchange
5 their settlement statements. Each party's settlement statement shall set forth the party's
6 statement of the case, identify controlling legal issues, concisely set out issues of liability
7 and damages, and shall set forth the party's settlement position, including the last offer or
8 demand made by that party, and a separate statement of the offer or demand the party is
9 prepared to make at the settlement conference. **The settlement conference briefs shall**
10 **not be filed with the Clerk of the Court.**

11 **All named parties, all counsel, and any other person(s) whose authority is**
12 **required to negotiate and enter into settlement shall appear in person at the**
13 **conference.** The individual(s) present at the Mandatory Settlement Conference with
14 settlement authority must have the unfettered discretion and authority on behalf of the party
15 to: 1) fully explore all settlement options and to agree during the Mandatory Settlement
16 Conference to any settlement terms acceptable to the party (*G. Heileman Brewing Co., Inc.*
17 *v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989)), 2) change the settlement position
18 of a party during the course of the Mandatory Settlement Conference (*Pitman v. Brinker*
19 *Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003)), and 3) negotiate a settlement without
20 being restricted by any predetermined level of authority (*Nick v. Morgan's Foods, Inc.*,
21 270 F.3d 590, 596 (8th Cir. 2001)).

22 Governmental entities may appear through litigation counsel only. As to all other
23 parties, appearance by litigation counsel only is not acceptable. Retained outside corporate
24 counsel shall not appear on behalf of a corporation as the party who has the authority to
25 negotiate and enter into a settlement. **The failure of any counsel, party or authorized**

27 28 ¹ Statements under 20 pages in length, including attachments and exhibits, shall be e-mailed to chambers
at efile_Bartick@casd.uscourts.gov. Statements exceeding 20 pages in length, including attachments and
exhibits, must be delivered directly to chambers.

1 **person to appear at the Mandatory Settlement Conference as required shall be cause**
2 **for the immediate imposition of sanctions.** All conference discussions will be informal,
3 off the record, privileged, and confidential.

4 8. Pursuant to Honorable Gonzalo P. Curiel's Civil Pretrial & Trial Procedures,
5 the parties are excused from the requirement of Local Rule 16.1(f)(2)(a); no Memoranda
6 of Law or Contentions of Fact are to be filed.

7 9. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
8 Civ. P. 26(a)(3) by **January 26, 2018**. Failure to comply with these disclosure
9 requirements could result in evidence preclusion or other sanctions under Fed. R. Civ. P.
10 37.

11 10. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
12 **February 2, 2018**. At this meeting, counsel shall discuss and attempt to enter into
13 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
14 exchange copies and/or display all exhibits other than those to be used for impeachment.
15 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall
16 note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ.
17 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
18 order.

19 11. Counsel for Plaintiff will be responsible for preparing the pretrial order and
20 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **February 9,**
21 **2018**, Plaintiff's counsel must provide opposing counsel with the proposed pretrial order
22 for review and approval. Opposing counsel must communicate promptly with Plaintiff's
23 attorney concerning any objections to form or content of the pretrial order, and both parties
24 shall attempt promptly to resolve their differences, if any, concerning the order.

25 12. The Proposed Final Pretrial Conference Order, including objections to any
26 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
27 lodged with the assigned district judge by **February 16, 2018**, and shall be in the form
28 prescribed in and comply with Local Rule 16.1(f)(6).

1 13. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
2 **Gonzalo P. Curiel** on February 23, 2018 at 1:30pm. The Court will set a trial date during
3 the pretrial conference. The Court will also schedule a motion in limine hearing date during
4 the pretrial conference.

5 14. The parties must review the chambers' rules for the assigned district judge
6 and magistrate judge.

7 15. A post-trial settlement conference before a magistrate judge may be held
8 within 30 days of verdict in the case.

9 16. The dates and times set forth herein will not be modified except for good cause
10 shown.

11 17. Briefs or memoranda in support of or in opposition to all motions noticed for
12 the same motion day shall not exceed twenty-five (25) pages in length, per party, without
13 leave of the judge who will hear the motion. No reply memorandum shall exceed ten (10)
14 pages without leave of a district court judge. Briefs and memoranda exceeding ten (10)
15 pages in length shall have a table of contents and a table of authorities cited.

16 18. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
17 case hereafter.

18 IT IS SO ORDERED.

19 Dated: September 15, 2017



LOUISA S PORTER
United States Magistrate Judge

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